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10/663,574	09/16/2003	Gabriel G. Marcu	2095.000900/P3112	5291
62293	7590	03/24/2009	EXAMINER	
WILLIAMS, MORGAN & AMERSON, P.C. 10333 RICHMOND AVE. SUITE 1100 HOUSTON, TX 77042			RATCLIFFE, LUKE D	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: GABRIEL MARCU

Application No. 10/663,574
Technology Center 3600

Mailed: March 24, 2009

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on November 19, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

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EXAMINER'S ANSWER,
INCONSISTENCIES WITH THE BRIEF AND/OR
LAST REJECTION OF RECORD

A review of the file finds inconsistencies between the Final Rejection mailed January 4, 2007, corresponding Status of Claims section in the Appeal Brief and the Examiner's Answer as set forth below.

Final Rejection

A review of the Final Rejection mailed on January 4, 2007, finds the following status of the claims: claims cancelled: 6, 7, 9, 14-17, 24-25 and 31-34 claims allowed: NONE, claims rejected: 1-8, 10-13, 18-23, 26-30 and 35-45 and claims withdrawn: NONE. Specifically, a review of the Final Rejection finds that claim 37 is not discussed in any grounds of rejection.

Examiner's Answer

A review of the Examiner's Answer mailed on December 26, 2007, finds that the status of claim 37 as compared to the Final Rejection (Office Action Summary) and the Appeal Brief's Status of Claims is not consistent with the Grounds of Rejection section of the Answer. Specifically, a review of the Examiner's Answer finds that claim 37 is not discussed in any grounds of rejection for review by the Board of Patent Appeals and Interferences.

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Clarification of claim 37 is required.

Examiner's Answer, Grounds of Rejection

A review of the file finds that the Examiner has provided the incorrect patent application number for the Bachmann reference listed on page 8 of the Examiner's Answer mailed December 26, 2007. Appropriate correction is required.

INFORMATION DISCLOSURE STATEMENT

Appellant filed an Information Disclosure Statement (IDS) dated April 30, 2007. There is no indication on the record that the Examiner has considered the above Information Disclosure Statement. MPEP § 609 requires the Examiner to consider any Information Disclosure Statement filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner's consideration of the above Information Disclosure Statement is required.

RESPONSE TO REPLY BRIEF

On May 29, 2008, the Examiner mailed a communication acknowledging receipt of Appellant's Reply Brief filed on March 3, 2008. The response contains additional arguments, which are considered improper. The comments made by the Examiner constitute a Supplemental Examiner's Answer. In accordance with

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MPEP § 1207.05, all Supplemental Examiner's Answers must be approved by a Technology Center (TC) Director or designee.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Examiner's Answer mailed on December 26, 2007;
- 2) issue a corrected Examiner's Answer to clarify the rejection of claim 37 and to correct other sections of the Answer as may be required;
- 3) include the necessary approval from the TC Director or designee in accordance with MPEP 1207.05, as may be required for any new grounds of rejection;
- 4) consider the Information Disclosure Statement filed April 30, 2007;
- 5) properly consider and acknowledge the Reply Brief filed March 3, 2008, and
- 6) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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KZ/MTV/tsj

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